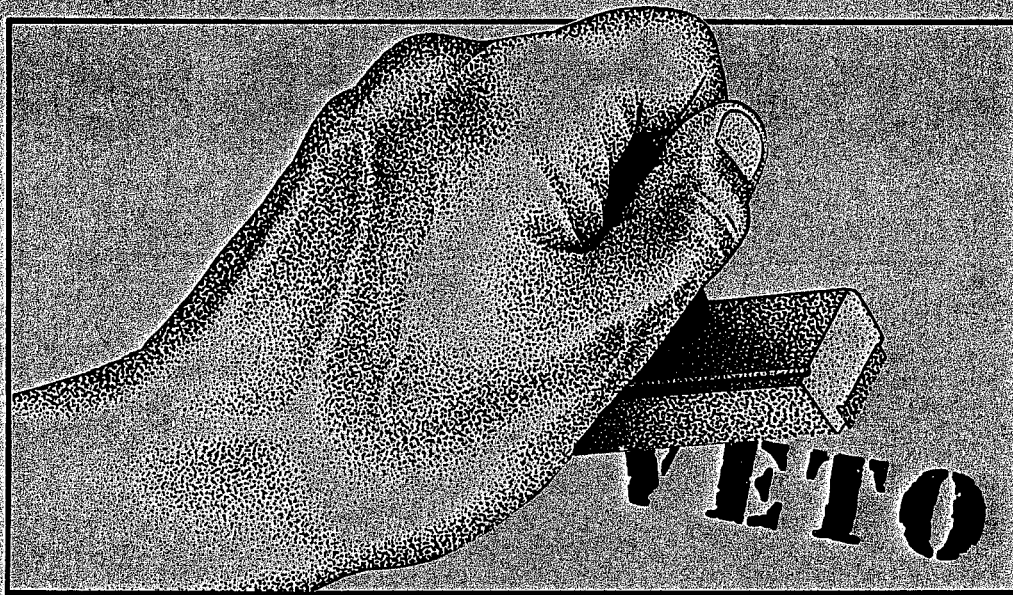


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GUBERNATORIAL VETO

Powers, Procedures, and Override History



STAFF MEMORANDUM
MAY 22, 1990
TEXAS LEGISLATIVE COUNCIL

Postadjournment Veto

Article IV, Section 14, of the Texas Constitution grants the governor the power to veto bills after adjournment by objecting in the proper manner. The issue is whether the Texas Legislature during a subsequent session may reconsider and override the governor's veto of a bill that was passed during an immediately preceding session. The Texas Constitution does not include a provision that affirmatively grants the legislature the power to reconsider and override the governor's postadjournment veto of a bill.

No Texas case or attorney general opinion directly addresses this issue. However, courts of other states with a similar constitutional provision have interpreted the language "unless the Legislature, by its adjournment, prevent its return, in which case it shall be a law, unless he shall file the same, with his objections" The majority view is represented in 64 A.L.R. 1446:

The rule supported by the weight of authority is that a constitutional provision to the effect that if the governor does not return a bill within a certain number of days after it is presented to him, the same shall become a law unless the legislature, by adjournment, prevents its return, has reference to a final adjournment of the legislature, or legislative session, and not to a mere temporary adjournment or recess, or an adjournment from day to day.

The case most often cited for the majority view is *State v. Dammann*, 267 N.W. 433, 221 Wis. 551 (1936). In that case, the court considered whether the word "adjournment" meant sine die adjournment or both a final and a temporary adjournment of either or both of the houses. The court stated:

It is our conclusion that the word "adjournment" means sine die adjournment of the Legislature, and that such an adjournment is the only one that prevents the return of a bill. When a Legislature adjourns sine die, it ceases to exist, and consequently has no further opportunity to exercise its constitutional right to consider a bill disapproved by the Governor and to pass it over his veto. Its officers are no longer officers. Their tenure of office ends at the moment of adjournment. A bill returned by the Governor to the Legislature at a time when the latter has no further opportunity either to reconsider it, or to pass it over his veto, has not passed through the possible and proper legislative stages in which, under the Constitution, it may become a law. (267 N.W. at 437)

A review of other state cases disclosed that the courts have strictly construed the state constitutional provisions in determining the governor's postadjournment veto power as well as the legislature's authority to reconsider such vetoes. See *Woessner v. Bullock*, 93 N.E. 1057, 176 Ind. 166 (Ind. 1911) and *State Ex. Rel. Gilmore v. Brown*, 451 N.E.2d 235 (Ohio 1983). The courts' rationale has basically been that the veto power of the governor constitutes a check on legislative power and must, therefore, be strictly interpreted. On the other hand, the courts have also reasoned that the veto helps to preserve the separation of powers between the executive and legislative branches, and it must not be limited or expanded except as provided in the state constitution. For example, a few states such as Missouri, Maryland, and Hawaii have enacted a constitutional provision that permits the legislature to meet at the next regular or special session or at a special veto session and reconsider a bill vetoed following adjournment.

Moreover, it is clear, as discussed below, that a subsequent session of the legislature may not override a veto of an item of appropriation in a bill from a previous session. It may be argued that the same result was intended for vetoed bills generally since it is not clear why the framers of the constitution would have intentionally distinguished between items of appropriation and bills for purposes of legislative override of a veto.

Since the Texas Constitution does not affirmatively grant the legislature the authority to reconsider postadjournment vetoes at a subsequent session, it appears that the legislature does not have the power to reconsider and override the governor's veto of a bill passed during an immediately preceding session. A strong argument could be made that such legislative action would be unconstitutional.

A subsequent called session of the legislature may not override a line item veto of an item approved by the legislature at an earlier session. The language in Article IV, Section 14, to describe the effect of a line item veto that occurs after the legislative session is over does not contain the ambiguities found in that governing vetoes of bills. The applicable provision of Article IV, Section 14, states that if a bill containing several items of appropriation is in the hands of the governor when the legislature adjourns, the governor has 20 days from adjournment to veto any items of appropriation. If the governor vetoes an item in the time provided, "such item or items shall not take effect."

The previous Texas Constitution of 1866 contained a specific provision requiring an item of appropriation vetoed after the session to be submitted to the next session of the legislature for reconsideration. That provision was dropped from the present constitution of 1876.